

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**TQP DEVELOPMENT, LLC**

**Plaintiff,**

**vs.**

**Civil Action No. 2:08cv471**

- (1) MERRILL LYNCH & CO., INC.;**
- (2) BANK OF AMERICA CORP.;**
- (3) BANK OF AMERICA, N.A.;**
- (4) CAPITAL ONE FINANCIAL CORPORATION;**
- (5) CAPITAL ONE SERVICES, INC.;**
- (6) CAPITAL ONE, NA;**
- (7) COMERICA INCORPORATED;**
- (8) COMERICA BANK AND TRUST, NA;**
- (9) CITIGROUP INC.;**
- (10) PRIMERICA FINANCIAL SERVICES, INC.;**
- (11) CITIBANK NA;**
- (12) CITIGROUP GLOBAL MARKETS INC. D/B/A SMITH BARNEY;**
- (13) E\*TRADE FINANCIAL CORPORATION;**
- (14) FIDELITY INVESTMENTS, INC.;**
- (15) FMR LLC;**
- (16) FMR CORP.;**
- (17) THE GOLDMAN SACHS GROUP, INC.;**
- (18) GOLDMAN, SACHS & CO.;**
- (19) ING GROUP N.V.;**
- (20) ING BANK FSB;**
- (21) SHAREBUILDER SECURITIES CORPORATION;**
- (22) SHAREBUILDER CORPORATION;**
- (23) MORGAN STANLEY;**
- (24) MORGAN STANLEY & CO., INC.;**
- (25) THE ROYAL BANK OF SCOTLAND GROUP PLC;**
- (26) CITIZENS FINANCIAL GROUP, INC.;**
- (27) RBS CITIZENS, N.A.;**

- (28) JPMORGAN CHASE & CO.;
- (29) JPMORGAN CHASE BANK NA;
- (30) RAYMOND JAMES FINANCIAL,  
INC.;
- (31) TD AMERITRADE HOLDING  
CORPORATION;
- (32) TD AMERITRADE, INC.;
- (33) REGIONS FINANCIAL  
CORPORATION;
- (34) NATIONAL CITY CORPORATION;
- (35) NATIONAL CITY BANK;
- (36) INTERNATIONAL BANCSHARES  
CORPORATION;
- (37) IBC SUBSIDIARY CORPORATION;
- (38) INTERNATIONAL BANK OF  
COMMERCE;
- (39) AMEGY CORPORATION;
- (40) AMEGY BANK, NA D/B/A/ AMEGY  
BANK OF TEXAS;
- (41) FIFTH THIRD BANCORP; AND
- (42) FIFTH THIRD BANK.

**Defendants.**

**ANSWER BY DEFENDANT CAPITAL ONE FINANCIAL CORPORATION**

Defendant Capital One Financial Corporation (“COFC”), hereby Answers the Complaint (“Complaint”) filed by Plaintiff TQP Development, LLC (“TQP”), as follows:

**PARTIES**

1. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint and therefore denies the allegation.
2. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint and therefore denies the allegation.
3. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint and therefore denies the allegation.

4. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint and therefore denies the allegation.

5. COFC admits the allegations contained in paragraph 5 of the Complaint.

6. Up until January 22, 2009, Capital One Services, Inc. was a subsidiary of Capital One Financial Corporation. On January 22, 2009, Capital One Services, Inc. became a subsidiary of Capital One, National Association, a wholly-owned subsidiary of COFC. On February 1, 2009, Capital One Services, Inc. became known as Capital One Services, LLC. COFC denies all allegations in paragraph 6 of the Complaint that are inconsistent with the facts set forth in this paragraph. COFC admits the remaining allegations contained in paragraph 6 in of the Complaint.

7. COFC admits the allegations contained in paragraph 7 of the Complaint.

8. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and therefore denies the allegation.

9. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and therefore denies the allegation.

10. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint and therefore denies the allegation.

11. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and therefore denies the allegation.

12. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and therefore denies the allegation.

13. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and therefore denies the allegation.

14. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and therefore denies the allegation.

15. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint and therefore denies the allegation.

16. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint and therefore denies the allegation.

17. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint and therefore denies the allegation.

18. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint and therefore denies the allegation.

19. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint and therefore denies the allegation.

20. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint and therefore denies the allegation.

21. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint and therefore denies the allegation.

22. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint and therefore denies the allegation.

23. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint and therefore denies the allegation.

24. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint and therefore denies the allegation.

25. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint and therefore denies the allegation.

26. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and therefore denies the allegation.

27. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint and therefore denies the allegation.

28. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint and therefore denies the allegation.

29. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint and therefore denies the allegation.

30. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint and therefore denies the allegation.

31. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint and therefore denies the allegation.

32. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint and therefore denies the allegation.

33. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint and therefore denies the allegation.

34. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint and therefore denies the allegation.

35. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint and therefore denies the allegation.

36. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint and therefore denies the allegation.

37. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint and therefore denies the allegation.

38. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint and therefore denies the allegation.

39. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint and therefore denies the allegation.

40. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint and therefore denies the allegation.

41. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint and therefore denies the allegation.

42. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint and therefore denies the allegation.

43. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint and therefore denies the allegation.

#### **JURISDICTION AND VENUE**

44. COFC denies any infringing activity under Title 35 U.S. Code (“U.S.C.”), and thus denies that proper subject matter jurisdiction exists under 28 U.S.C. §§ 1331 and 1338(a).

45. COFC denies committing, directly nor indirectly, any acts of patent infringement.

COFC asserts that the remaining allegations appearing in paragraph 45 are legal conclusions for which no response is required.

46. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint and therefore denies the allegation.

47. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint and therefore denies the allegation.

48. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint and therefore denies the allegation.

49. COFC denies committing, directly nor indirectly, any acts of patent infringement.

COFC asserts that the remaining allegations appearing in paragraph 49 are legal conclusions for which no response is required.

50. COFC denies that Capital One Services, Inc. has committed, directly nor indirectly, any acts of patent infringement. COFC asserts that the remaining allegations appearing in paragraph 50 are legal conclusions for which no response is required.

51. COFC denies committing, directly nor indirectly, any acts of patent infringement.

COFC asserts that the remaining allegations appearing in paragraph 51 are legal conclusions for which no response is required.

52. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint and therefore denies the allegation.

53. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint and therefore denies the allegation.

54. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint and therefore denies the allegation.

55. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint and therefore denies the allegation.

56. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint and therefore denies the allegation.

57. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint and therefore denies the allegation.

58. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint and therefore denies the allegation.

59. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint and therefore denies the allegation.

60. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint and therefore denies the allegation.

61. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint and therefore denies the allegation.

62. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the Complaint and therefore denies the allegation.

63. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the Complaint and therefore denies the allegation.

64. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint and therefore denies the allegation.

65. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Complaint and therefore denies the allegation.

66. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint and therefore denies the allegation.



67. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint and therefore denies the allegation.

68. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint and therefore denies the allegation.

69. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint and therefore denies the allegation.

70. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint and therefore denies the allegation.

71. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Complaint and therefore denies the allegation.

72. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the Complaint and therefore denies the allegation.

73. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the Complaint and therefore denies the allegation.

74. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the Complaint and therefore denies the allegation.

75. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the Complaint and therefore denies the allegation.

76. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Complaint and therefore denies the allegation.

77. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the Complaint and therefore denies the allegation.

78. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the Complaint and therefore denies the allegation.

79. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the Complaint and therefore denies the allegation.

80. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint and therefore denies the allegation.

81. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the Complaint and therefore denies the allegation.

82. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint and therefore denies the allegation.

83. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the Complaint and therefore denies the allegation.

84. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the Complaint and therefore denies the allegation.

85. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the Complaint and therefore denies the allegation.

86. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the Complaint and therefore denies the allegation.

87. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the Complaint and therefore denies the allegation.

### **COUNT I**

88. COFC admits that, on its face, U.S. Patent No. 5,412,730 (the “730 patent”) is entitled “encrypted data transmission system employing means for randomly altering the encryption

keys” and lists an issue date of May 2, 1995. COFC denies the remaining allegations of paragraph 88.

89. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the Complaint and therefore denies the allegation.

90. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the Complaint and therefore denies the allegation.

91. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint and therefore denies the allegation.

92. COFC denies committing, directly nor indirectly, any acts of patent infringement. COFC also denies all of the other allegations in paragraph 92 of the Complaint.

93. COFC admits that Capital One Services, Inc., through January 31, 2009 operated, and Capital One Services, LLC from February 1, 2009 onward operates at least one web site that utilizes encryption technology. COFC denies that Capital One Services, Inc. committed or that Capital One Services, LLC has committed, directly nor indirectly, any acts of patent infringement. COFC denies the remaining allegations contained in paragraph 93 of the Complaint.

94. COFC admits that one or more web sites affiliated with Capital One, NA are being operated and that such one or more web sites utilize encryption technology. COFC denies that Capital One, NA has committed, directly nor indirectly, any acts of patent infringement. COFC denies the remaining allegations contained in paragraph 94 of the Complaint.

95. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the Complaint and therefore denies the allegation.

96. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the Complaint and therefore denies the allegation.

97. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the Complaint and therefore denies the allegation.

98. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the Complaint and therefore denies the allegation.

99. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 of the Complaint and therefore denies the allegation.

100. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100 of the Complaint and therefore denies the allegation.

101. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101 of the Complaint and therefore denies the allegation.

102. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the Complaint and therefore denies the allegation.

103. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Complaint and therefore denies the allegation.

104. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the Complaint and therefore denies the allegation.

105. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Complaint and therefore denies the allegation.

106. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106 of the Complaint and therefore denies the allegation.

107. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107 of the Complaint and therefore denies the allegation.

108. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108 of the Complaint and therefore denies the allegation.

109. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 of the Complaint and therefore denies the allegation.

110. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 110 of the Complaint and therefore denies the allegation.

111. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 111 of the Complaint and therefore denies the allegation.

112. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 112 of the Complaint and therefore denies the allegation.

113. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113 of the Complaint and therefore denies the allegation.

114. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114 of the Complaint and therefore denies the allegation.

115. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115 of the Complaint and therefore denies the allegation.

116. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116 of the Complaint and therefore denies the allegation.

117. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117 of the Complaint and therefore denies the allegation.

118. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 118 of the Complaint and therefore denies the allegation.

119. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 of the Complaint and therefore denies the allegation.

120. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 120 of the Complaint and therefore denies the allegation.

121. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121 of the Complaint and therefore denies the allegation.

122. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122 of the Complaint and therefore denies the allegation.

123. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 123 of the Complaint and therefore denies the allegation.

124. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 124 of the Complaint and therefore denies the allegation.

125. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125 of the Complaint and therefore denies the allegation.

126. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 126 of the Complaint and therefore denies the allegation.

127. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 127 of the Complaint and therefore denies the allegation.

128. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 128 of the Complaint and therefore denies the allegation.

129. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 129 of the Complaint and therefore denies the allegation.

130. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 130 of the Complaint and therefore denies the allegation.

131. COFC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131 of the Complaint and therefore denies the allegation.

132. COFC denies any infringement of the '730 patent and specifically denies any willful infringement of the '730 patent.

133. COFC denies any infringement of the '730 patent. The remaining allegations in paragraph 133 of the Complaint are legal conclusions for which no response is required.

134. COFC denies the allegations of paragraph 134 of the Complaint.

### **ADDITIONAL DEFENSES**

#### **FIRST ADDITIONAL DEFENSE**

1. Each claim of the '730 patent is invalid for failure to comply with the conditional requirements for patentability as set forth in Title 35 U.S.C., including but not limited to §§ 101, 102, 103, and 112.

#### **SECOND ADDITIONAL DEFENSE**

2. COFC does not infringe, has not infringed, and does not and has not induced infringement or contributed to infringement of any claim of the '730 patent under any theory of infringement, including direct infringement, indirect infringement, joint infringement literal infringement, or infringement under the doctrine of equivalents.

#### **THIRD ADDITIONAL DEFENSE**

3. TQP is estopped, based on statements, representations, and admissions made during the prosecution of the patent application resulting in the issuance of the '730 patent, from maintaining that any claim of the '730 patent covers any of COFC's articles, methods, services, equipment, products, devices, or components, or other activity engaged in by COFC, or from asserting any interpretation of the '730 patent claims that would be broad enough to cover any of COFC's articles, methods, services, equipment, products, devices, or components, or other activity engaged in by COFC.

#### **FOURTH ADDITIONAL DEFENSE**

4. COFC hereby reserves the right to rely upon such other additional defenses as may become available or apparent during discovery.

#### **COUNTERCLAIMS**

Capital One Financial Corporation ("COFC") states as its counterclaims against TQP Development, LLC ("TQP") the following:

#### **THE PARTIES**

1. COFC is a corporation in good standing, incorporated under the laws of the State of Delaware, with its principal place of business at 1680 Capital One Drive, McLean, Virginia 22102.

2. On information and belief, TQP is a limited liability company under the laws of the State of Texas, with offices at 207 C North Washington Street, Marshall, Texas 75670.

#### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over COFC's counterclaims against TQP pursuant to 28 U.S.C. §§ 1331, 1338, and 2201-2202.

4. This Court has personal jurisdiction over TQP.



5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c).

## **FACTUAL ALLEGATIONS**

### **GENERAL ALLEGATIONS**

6. On December 15, 2008, TQP filed a Complaint for Patent Infringement.
7. TQP has alleged that it owns the '730 Patent, including the right to sue for past infringement.
8. An actual and justiciable controversy has arisen and presently exists between the parties to which COFC desires a declaration of rights pursuant to 28 U.S.C. § 2210(a) and Rule 57 of the Federal Rules of Civil Procedure.

### **FIRST COUNTERCLAIM**

#### **(Declaratory Judgment of Non-Infringement of United States Patent No. 5,412,730)**

9. COFC is not infringing, literally or under the Doctrine of Equivalents, any claim of the '730 Patent, nor has it previously so infringed any claim of the '730 Patent.

10. COFC therefore seeks judgment declaring, under the Patent Laws of the United States, that COFC is not infringing the '730 Patent literally, under the Doctrine of Equivalents, or contributorily, and that it is not inducing infringement. COFC further seeks judgment declaring, under the Patent Laws of the United States, that COFC has not previously infringed the '730 Patent literally, under the Doctrine of Equivalents, or contributorily, and that it is has not previously induced such infringement.

### **SECOND COUNTERCLAIM**

#### **(Declaratory Judgment of Invalidity of United States Patent No. 5,412,730)**

11. The '730 Patent and the claims that COFC is accused of infringing are invalid for failure to comply with one or more of the conditions for patentability including those set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112, among others.

12. COFC therefore seeks a judgment declaring, under the Patent Laws of the United States, that the '730 Patent and the claims that COFC is accused of infringing are invalid.

### **PRAYER FOR RELIEF**

WHEREFORE, Defendant COFC prays for judgment in its favor and against Plaintiff TQP providing that:

- A. the Complaint be dismissed in its entirety, with prejudice, and that TQP take nothing by its Complaint;
- B. the Court find each and every claim of the '730 Patent invalid;
- C. that COFC be declared not to infringe and not to have infringed, directly or indirectly, jointly, literally or by the Doctrine of Equivalents, any claim of the '730 Patent;
- D. that COFC be awarded its costs of suit;
- E. that the instant action is an "exceptional case" under 35 U.S.C. § 285, and awarding COFC attorneys' fees and costs; and
- F. that COFC be awarded such other and further relief to which it may be entitled.

### **JURY DEMAND**

COFC respectfully demands a trial by jury of any and all issues legally triable by right by jury in the above action.

Dated: February 2, 2009

Respectfully Submitted,

**SMITH & GILSTRAP**

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**By:** /s/ J. Rodney Gilstrap  
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**ATTORNEYS FOR DEFENDANT CAPITAL  
ONE FINANCIAL CORPORATION**

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this the 2nd day of February, 2009.

/s/ J. Rodney Gilstrap